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December 24, 1999

BY MESSENGER

Mary L. Cottrell, Secretary

Department of Telecommunications and Energy

One South Station

Boston, MA 02110

Re: Docket No. D.P.U. 96-80/81

Dear Ms. Cottrell:

I write with a brief but important response to the "Bell Atlantic-Massachusetts Reply Comments on Unbundled Network Element Provisioning," which were filed late yesterday.

Bell Atlantic's repeated plea that the Department not enter any order regarding Bell Atlantic's obligation to provide CLECs with non-discriminatory and unrestricted access to the unbundled network element platform ("UNE-P") and other UNE combinations cannot be squared either with the clear requirements of the Telecommunications Act of 1996, or with prior Department orders on the topic.

First, under the 1996 Act, the Department does not have the option of simply not deciding issues raised by the parties to an interconnection agreement arbitration. By law, if the parties do not resolve an issue by negotiation but instead bring it to the Department for arbitration, the Department must enter an appropriate order resolving the issue. In the words of the Act, the Department "shall resolve each issue set forth in the petition and the response, if any, by imposing appropriate conditions as required to implement subsection (c) upon the parties to the agreement…." 47 U.S.C. § 252(b)(4)(C). In the AT&T interconnection agreement, for example, Bell Atlantic refused to provide UNE-P and other UNE combinations unless ordered to do so by the Department or required to do so as a result of a decision of the United States Supreme Court. See Bell Atlantic/AT&T Interconnection Agreement, footnote at page 2 (filed with the Department on April 16, 1998). The issue of Bell Atlantic's obligation to provide non-discriminatory access to UNE-P and other UNE combinations has been presented to the Department for arbitration, and litigated by the parties, and now must be decided. In accordance with the Act, the Department should enter a clear order setting forth the requirements described in detail in AT&T's comments dated December 15, 1999.

Second, in its Phase 4-J and Phase 4-M Orders the Department has already made clear that where Bell Atlantic drops its opposition to a position taken by other parties on an issue being arbitrated under the Act, the appropriate outcome is for the Department to enter an order which will "hold Bell Atlantic to the commitments it made." Phase 4-J Order at 9. Accord, Phase 4-M Order at 9 (denying BA-MA's motion for reconsideration of the Phase 4-J Order).

There is only one plausible explanation for Bell Atlantic's strenuous insistence that the Department should not issue an enforceable order requiring non-discriminatory access to UNE-P, EELs, and other UNE combinations: Bell Atlantic wants room to dream up new theories for restricting access to UNE-P, consistent with the express assertion that Bell Atlantic "reserves the right" to change its mind in the future. See Bell Atlantic's 12/1/1999 Proposal at 13 n.14. Under the Act, and consistent with the Department's past practice, the Department should enter a binding order preventing Bell Atlantic from doing so.

Thank you for your assistance.

Very truly yours,

Kenneth W. Salinger

enclosure

pc: Paul Levy, Arbitrator

Joan Foster Evans, Hearing Officer (by messenger)

Paul Vasington, Commissioner (by messenger)

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